

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRANDON DIXON,	§
	§
Defendant Below-	§ No. 617, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0810000401
Plaintiff Below-	§
Appellee.	§

Submitted: December 11, 2009

Decided: February 17, 2010

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

ORDER

This 17th day of February 2010, upon consideration of the opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Brandon Dixon, filed this appeal from the Superior Court's denial of his motion for modification of sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Dixon's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Dixon pled guilty in April 2009 to one count of second degree robbery. The Superior Court sentenced him

immediately to five years at Level V incarceration, to be suspended after serving sixteen months for eighteen months of probation. In July 2009, Dixon filed a motion for modification of sentence, which was denied. His appeal from that order was dismissed for his failure to file an opening brief. In September 2009, Dixon filed a second motion for modification of sentence, which the Superior Court denied, among other reasons, for being untimely and repetitive. This appeal followed.

(3) In his opening brief on appeal, Dixon contends that the Superior Court abused its discretion in denying his motion for modification of sentence on the ground it was the result of a plea agreement pursuant to Superior Court Criminal Rule 11(e)(1)(C). Dixon is incorrect. The Superior Court did not deny his motion because his sentence was the result of a plea pursuant to Rule 11(e)(1)(C). Superior Court Criminal Rule 11(e)(1)(C) was repealed in July 2001, and thus provided no basis for the Superior Court's denial of his motion.

(4) In fact, the trial court denied Dixon's motion because it was untimely and repetitive. Pursuant to Superior Court Criminal Rule 35(b), a motion for modification of sentence must be filed within 90 days of sentencing, absent extraordinary circumstances. Moreover, Rule 35(b) provides that the Superior Court will not consider repetitive request for a

sentence modification. In this case, Dixon's second motion for modification of sentence was both repetitive and untimely. Under the circumstances, we find no abuse of discretion in the Superior Court's denial of his motion.¹

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹ *Shy v. State*, 246 A.2d 926, 927 (Del. 1968).